Supreme Court, U.S.
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No. 00-554

In the Supreme Court of the United States

UNITED STATES OF AMERICA,

Petitioner,

v.

DONALD N. SNYDER, Director of the Illinois Department of Corrections, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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STATEMENT OF THE CASE

In 1996, John Walker ("Walker"), a prisoner in the custody of the Illinois Department of Corrections ("DOC"), filed a complaint alleging, *inter alia*, violations of the Americans With Disabilities Act, 42 U.S.C. §§ 12131 *et seq.* ("ADA"). Walker has no vision in his right eye and poor vision in his left eye. He asserted that he was entitled to damages and injunctive relief under the ADA because the DOC had failed to provide him with audio books and a tape recorder, a brightly lit cell to himself, and a transfer to a more accommodating prison facility.

The district court determined that the ADA did not entitle Walker to a brightly lit cell or a prison transfer, but it did entitle him to audio books and a tape recorder. (Pet. App. 11a-12a). The court held, however, that the DOC defendants had qualified immunity for damages resulting from any refusal to provide the audio books and recorder before 1997 because the application of the ADA to state prisoners was not clearly established in the Seventh Circuit until *Crawford v. Indiana Dept. of Corrections*, 115 F.3d 481 (7th Cir. 1997). (Pet. App. 12a-13a). The court dismissed the complaint but allowed Walker to file an amended complaint to seek injunctive relief requiring the DOC to provide the requested equipment. (Pet. App. 20a).

In his amended complaint, Walker acknowledged that the DOC had provided him with a tape recorder and tapes since at least mid-1997, albeit with a requirement that he sign a form acknowledging financial responsibility for loss or damage to the equipment. (Pet. App. 26a). He did not indicate if there was a period during which

the DOC had refused to provide him with such equipment at all. Based on these allegations, the district court held that Walker's claim for injunctive relief was moot and dismissed the amended complaint. (Pet. App. 26a-27a).

Walker appealed the dismissals of his original and amended complaints to the Seventh Circuit. On appeal, the DOC defendants argued, in addition to mootness and qualified immunity, that the Eleventh Amendment barred Walker's ADA claim to the extent that that claim was made against the state. The Justice Department intervened to defend the constitutionality of the ADA's application to the states.

In its decision, the Seventh Circuit rejected the district court's qualified immunity analysis. (Pet. App. 3a-4a). The court held that ADA damages could be sought against the defendants only in their official capacity, and that qualified immunity could not protect persons sued in their official capacity. *Id.* Thus, Walker's claim for ADA damages against the DOC for the period, if any, when the DOC denied audio equipment to Walker was not barred by qualified immunity. The court nonetheless instructed the district court to dismiss the ADA claims on Eleventh Amendment grounds. (Pet. App. 4a-6a). The court held that Congress lacked authority to enact the ADA under section 5 of the Fourteenth Amendment and therefore could not subject states to ADA damage actions in federal court. *Id.* The court's opinion, as revised pursuant to a Petition for Rehearing filed by the Justice Department, was issued on July 12, 2000.

Walker filed a petition for rehearing with the Seventh Circuit which was denied on August 29, 2000. (Pet. App.

36a-37a). Walker has not filed a petition for writ of certiorari seeking review of the Seventh Circuit's decision. His time for doing so expires on November 27, 2000.

REASONS FOR DENYING THE WRIT

The policy of the Illinois Attorney General's Office in cases raising issues currently under review in *Board of Trustees of the University of Alabama v. Garrett*, No. 99-1240, has been to support the holding of petitions for writ of certiorari pending the issuance of the *Garrett* decision. *See, e.g.*, Memorandum of Respondent filed in *Stevens v. Illinois Dep't of Transp.*, No. 00-7. Because the party claiming relief in this matter has not sought certiorari, however, the usual policy should not apply here. The United States' petition for writ of certiorari should be denied because the United States lacks a sufficient stake in the outcome of this controversy to confer jurisdiction under Article III, let alone to justify certiorari.

The United States intervened before the court of appeals for the sole purpose of asserting a legal argument with respect to the application of the ADA to the states. While the United States had the authority to intervene in the appellate court to assert the "interests of the United States" in the application of the ADA to Walker's claims, *see* 28 U.S.C. § 517, this intervention did not cloak the United States with standing to assert these claims in Walker's absence. The plaintiff, John Walker, has not filed a petition for certiorari in this case and therefore would not be entitled to relief even if the Court were to reverse the Seventh Circuit's judgment. Moreover, the legal issue of the ADA's application to states is

already before the Court in *Garrett*. Therefore, there is no reason for this Court to grant certiorari in this case.

Although intervening parties are entitled to seek review in the Supreme Court, "an intervenor's right to appeal in the absence of the party on whose side intervention was permitted is contingent upon a showing by the intervenor that he fulfills the requirements of Article III." *Diamond v. Charles*, 476 U.S. 54, 68 (1986). When the original party fails to appeal and the intervenor has no personal actual or threatened injury, there is simply no case or controversy for the Court to decide. *Id.* at 63-68. Thus, in *Diamond*, an intervenor's petition to review a decision striking down a state abortion law was dismissed because the state, which would have had standing as the law's enforcer, failed to appeal. Only if the state had appealed could the intervenor have "'piggyback[ed]' on the State's undoubted standing . . . ; in the absence of the State in that capacity, there is no case for [the intervenor] to join." *Diamond*, 476 U.S. at 64.

This Court's decision in *Director, Office of Workers' Compensation Program v. Perini North River Assoc.*, 459 U.S. 297 (1983), is not to the contrary. In *Perini*, the Office of Workers' Compensation joined with an employee in challenging an administrative law judge's determination that the employee was not covered under the Longshoremen's and Harbor Workers' Compensation Act. *Id.* at 301. The appellate court ruled against the employee and the Office of Workers' Compensation, but only the Office of Workers' Compensation filed a petition for writ of certiorari. The respondent asserted that the failure of the employee to seek review as a petitioner was fatal to the certiorari request.

The Court agreed that standing requires an "'actual injury redressable by the court,'" so that legal questions will be resolved "'not in the rarified atmosphere of a debating society, but in a concrete factual context conducive to a realistic appreciation of the consequences of judicial action,' as well as to assure 'an actual factual setting in which the litigant asserts a claim of injury in fact.'" 459 U.S. at 305. Despite this concern, the Court in *Perini* determined that there was a justiciable controversy for two reasons. First, the Supreme Court rules then in effect—and since changed—provided that all parties to the proceeding below were automatically parties in the Supreme Court. *See* Sup. Ct. R. 19.6 (1984) (superseded 1990), reprinted in 23 *Moore's Federal Practice* § 512App.01 (Matthew Bender 3d ed.); Sup. Ct. R. 12.4 (1990) (superseded 1995), reprinted in 23 *Moore's Federal Practice* § 512App.02 (Matthew Bender 3d ed.). Thus, even without filing a petition for certiorari, the injured employee was a party before the Court. Second, while the injured employee did not seek review in the Supreme Court as a petitioner, he did file a brief in support of the Director's request for certiorari and a brief addressing the merits of his claim. *Id.* at 304-05.

However, the Supreme Court rule on which the Court relied in *Perini* has been amended and no longer treats all parties to the proceedings below as parties on appeal. To the contrary, the current rules provide only that parties to the proceedings below are "entitled to file documents." Sup. Ct. R. 12.6 (2000). Current rule 12.6 further explicitly provides that "[p]arties who file no document will not qualify for any relief from this Court." *Id.* These amendments make clear that a party to an appellate pro-

ceeding is not necessarily a party in the Supreme Court simply because another party has filed for review.

If Walker were a party to this petition, a reversal of the Seventh Circuit's judgment in this case would result in a remand to the district court for a determination of whether Walker was ever denied audio equipment, and if so, whether he was entitled to ADA damages for such denial. Thus, if Walker were a party to this petition, the respondents would not oppose the United States' request to hold its petition pending the Court's decision in *Garrett*. But because Walker has not filed a petition of his own in this Court (and assuming that he does not file one in the next few days) he will not be entitled to relief. As far as Walker is concerned, this case will be over. Therefore, even if this Court vacated the court of appeals' decision, nothing more would or could occur in this case.

The sole interest of the United States in this case is to vindicate a legal position, a position that has already been asserted in *Garrett*. There is no issue here about federal enforcement of the ADA because this is a private action involving only Walker's claim to personal damages. The United States may well be interested in defending its legal position on the constitutional basis of the ADA, but "the presence of a disagreement . . . is insufficient by itself to meet Article III's requirements." *Diamond*, 476 U.S. at 62. The United States' petition stands by itself, seeking the resolution of a naked legal question in the absence of a litigant claiming an injury in fact, and the Court will have no jurisdiction over the action if Walker fails to file a petition of his own. Therefore, the petition of the United States should be denied.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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